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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,809	08/21/2003	Christopher Marrs	NEU-5007	8038

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EXAMINER

FLOOD, MICHELE C

ART UNIT	PAPER NUMBER
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1654

DATE MAILED: 06/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/645,809

Applicant(s)

MARRS, CHRISTOPHER

Examiner

Michele Flood

Art Unit

1654

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 2-5 and 11-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,6-10 and 16-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of Group I, Claims 1-10 and Claims 12-20, in the reply filed on December 18, 2004 is acknowledged. Further acknowledgment is made of Applicant's species election of olive extract, in the reply filed on April 6, 2005.

The claims have been examined, insofar, as they read on the elected invention.

Therefore, Claims 1, 6-10 and 16-20 are under examination.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 7-10 and 17-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is rendered vague and indefinite by the term "Lanatellys" because the term is unsearchable. The examiner's preliminary analysis and extensive search demonstrates that the claimed subject matter cannot be adequately searched by class or keyword among patents and typical sources of non-patent literature.

The metes and bounds of Claims 10 and 17 are rendered uncertain because the percentage amounts of the claim-designated ingredient are not set forth in terms of either "by weight" percentage amount of the total composition. The lack of clarity

Art Unit: 1654

renders the claims indefinite since the resulting claims do not clearly set forth the metes and bounds of the patent protection desired.

Claim 17 recites the limitation "derivative". One of ordinary skill in the art would not know how to interpret the metes and bounds of this limitation. A derivation of a chemical compound may be closely patterned after the subject chemical compound or may be loosely patterned after the subject chemical compound, such that it may bear no resemblance or form recognizable as the subject chemical compound which may be chemically and/or biologically unrelated in function or form to the subject chemical compound. Thus, the metes and bounds of Claim 17 are made uncertain by "derivative" because it is unclear as to what constitutes either a "an isoascorbic derivative" or "a tocopherol derivative", or how closely related the derivative must be to considered a "derivative" of the claim-designated compounds.

Claim 17 recites the limitation "said isoascorbic acid derivative", in line 6. The claim lacks sufficient antecedent basis, as no wherein in Claim 1, as drafted, is there any mention of a "said isoascorbic derivative".

All other cited claims depend directly or indirectly from rejected claims and are, therefore, also, rejected under U.S.C. 112, second paragraph for the reasons set forth above.

Claim Objections

Each of Claims 16 and Claims 18-20 is objected under 37 CFR 1.75 as being a substantial duplication of each of Claims 6-9, respectively. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k)

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting

directly or indirectly from an international application filed before November 29, 2000.

Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1, 6-10, 16 and 18-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Pinnell et al. (A*).

Applicant claims a composition comprising: (a) an oxygen labile active agent selected from the group consisting of Chysanthellum extract, Neem extract, Lantatellys extract, Bacopa monnieri extract, and Olive leaf extract. Applicant further claims the composition of claim 1, wherein said oxygen labile active agent is selected from the group consisting of ascorbic acid, tocotrienol, hydroquinone, ubiquinone and dihydrolipoic acid; wherein said oxygen labile active agent is a retinoid; and, wherein said oxygen labile active agent is retinol; wherein said composition comprises: (a) about 0.001 to about 20% by weight, of said oxygen labile active agent. Applicant claims a composition of claim 9, wherein said composition comprises (i) from about 0.01% to about 1% by weight, of said retinol and (ii) from about 0.1% to about 10%, by weight of said plant extract.

Pinnell teaches a composition comprising at least about (a) 0.5% of olive leaf extract; (b) 5-25% of L-ascorbic extract; (c) 0.5-2% of a vitamin E component selected from the group consisting of tocopherols and tocotrienols (an oxygen labile active agent); and (d) 0.5-2% of vitamin A (retinol, an oxygen labile active agent). See patent claims.

The reference anticipates the claimed subject matter.

Claims 1, 6, 7, 16 and 18-20 are rejected under 35 U.S.C. 102(b or e) as being anticipated by Stuckler (B or N, WO 99/48386 or US 6,605,296 B1, referred to herein for convenience).

Applicant's claimed invention was set forth above.

Stuckler teaches a composition comprising tocopherol in an amount of at least 0.05 parts by weight; and, ascorbic acid and olive leaf extract in an amount of at least 0.05 parts by weight each of the total weight of the total composition. See entire patent, and especially patent claims 1, 6, 7 and 20.

The references anticipate the claimed subject matter.

* Applicant is advised that the cited U.S. patents and patent application publications are available for download via the Office's PAIR. As an alternate source, all U.S. patents and patent application publications are available on the USPTO web site (www.uspto.gov), from the Office of Public Records and from commercial sources. Should you receive inquiries about the use of the Office's PAIR system, applicants may be referred to the Electronic Business Center (EBC) at <http://www.uspto.gov/ebc/index.html> or 1-866-217-9197.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Flood whose telephone number is 571-272-0964. The examiner can normally be reached on 7:00 am - 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell can be reached on 571-272-0974. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1654

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


MICHELE FLOOD
PRIMARY EXAMINER

Michele Flood
Examiner
Art Unit 1654

MCF
June 7, 2005